

NETFLIX, INC. v. BLOCKBUSTER INC.

Case No. 06 2361 WHA (JCS)

EXHIBIT E

TO

**DECLARATION OF WILLIAM J. O'BRIEN IN SUPPORT OF
BLOCKBUSTER'S BRIEF ON CLAIM CONSTRUCTION**

Filed on December 27, 2006

PNU

Office Action Summary

Application No. 09/561,041	Applicant(s) Hastings et al.
Examiner Kenneth R. Rice	Group Art Unit 2167

~The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address~

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely
- If NO period of response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133)

Status

- Responsive to communication(s) filed on _____
- This action is FINAL
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- Claim(s) 1-80 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration
- Claim(s) _____ is/are allowed
- Claim(s) 1-80 is/are rejected
- Claim(s) _____ is/are objected to
- Claims _____ are subject to restriction or election requirement

Application Papers

- See the attached Notice of Draftsman's Patent Drawing Review, PTO-948
- The proposed drawing correction, filed on _____ is approved disapproved
- The drawing(s) filed on _____ is/are objected to by the Examiner
- The specification is objected to by the Examiner
- The oath or declaration is objected to by the Examiner

Status of Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d)
 - All Some* None of the CERTIFIED copies of the priority documents have been received.
 - received in Application No. _____.
 - received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- Information Disclosure Statement(s), PTO-1449
- Notice of References Cited, PTO-892
- Notice of Draftsman's Patent Drawing Review, PTO-948
- Interview Summary, PTO-413
- Notice of Informal Patent Application, PTO-152
- Other _____

U.S. Patent and Trademark Office
PTO-326 (Rev. 3-97)

Office Action Summary

Part of Paper No. 5

Serial Number 09/561, . ,1
Art Unit 2167

2

PART III: REASONS FOR REJECTIONS AND OBJECTIONS

The following is a quotation of the appropriate paragraphs of 35 USC 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States

(c) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent

Claims 1-80 are rejected under 35 USC 102(b) based upon a public use or sale of the invention. The applicant's web site at www.netflix.com admits to providing the claimed business method to the public since 1998. Since the filing date of the application is April 28, 2000, this constitutes prior use more than a year before filing the application

Claims 1-80 rejected under 35 USC 102(b) as being clearly anticipated by Green et al. Note column 13, lines 46-49, which describe video rental.

Claims 1-80 rejected under 35 USC 102(c) as being clearly anticipated by Bernard et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Rice at (703) 308-3495. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist at (703) 305-3900.



4/18/02/KRR
Kenneth R. Rice
Primary Examiner
Art Unit 2167